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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,884	10/20/2003	Thomas Stark	A 91841	2059

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Walter Ottesen  
Patent Attorney  
P.O. Box 4026  
Gaithersburg, MD 20885-4026

EXAMINER
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NGUYEN, MAI T

ART UNIT	PAPER NUMBER
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3671

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/687,884

Applicant(s)

STARK ET AL.

Examiner

Mai T. Nguyen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-14,21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-14,21 and 22 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 8 is objected to because of the following informalities: "said frame" should be –a frame—in lines 26 and 27 of the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Ellis et al. (US 3,792,734).

Regarding claim 22, Ellis discloses a portable handheld work apparatus arrangement in figure 1, comprising:

a work apparatus including a drive motor (16) and a work tool (15) driven by said drive motor;

at least one transport wheel (20);

first and second struts (22 and 28, respectively) for connecting the transport wheel to the work apparatus;

the first strut (22) having a first end (seen as end containing bolt 23) facing away from the transport wheel and the first strut being rotatably mounted on the work apparatus at the first end (seen at bolt 23);

the second strut (28) having a first end (seen as end containing bolt 30) facing away from the transport wheel;

the second strut being fixable at the first end thereof on the work apparatus at at least first and second attachment points (seen as the top most and bottom most notches 37) thereon so as to change the position of the transport wheel relative to the work apparatus;

the attachment points being configured as respective detent recesses (see Fig. 1); and

a bolt (34) mounted on the second strut for coacting with the detent recesses and the bolt extending transversely to the second strut.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. in view of Wians et al. (6,085,502).

Regarding claim 8, Ellis discloses the aforementioned work apparatus arrangement comprising a bolt (34) coacting with the first and second detent recesses to fix the transport wheel in position relative to a frame (11). Ellis fails to disclose the first and second attachment points being configured as a detent recess closed and

open, respectively, toward the second strut. Wians teaches a closed end detent recess (seen in Fig. 5 as the right end of recesses 104) and an open end detent recess (seen as the left end of recesses 104). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide detent recesses with closed and open ends as taught by Wians because it is well known in the art for use as adjustment mechanisms.

6. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis et al. in view of Wians et al. as applied to claim 8 above, and further in view of Abenroth et al. (US 2003/0178208).

Regarding claim 9, the combination of Ellis and Wians discloses the aforementioned work apparatus arrangement comprising a bolt but fails to disclose a fixing screw. Abenroth teaches a fixing screw (seen as 136 in Fig. 4) coaxing with bolt (132). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the bolt of the combination of Ellis and Wians with the fixing screw of Abenroth because it is well known in the art to use a fixing screw coaxing with a bolt to releasably fix adjustable members.

Regarding claim 10, Ellis discloses a rail (36) fixedly connected to the work apparatus and the detent recesses being formed in the rail.

Regarding claim 11, Ellis discloses a rail (36), and the rail and the first strut (22) being releasably fixed on the work apparatus.

7. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ellis in view of Buckendorf, Jr. (US 5,092,112).

Regarding claim 21, Ellis discloses the aforementioned work apparatus arrangement comprising two handle tubes (seen as 12 in Fig. 4) having respective handles and being connected to the work apparatus. Ellis fails to disclose a carrier handle and the transport wheel not coming into engagement with the ground when the second strut is at the first attachment point. However, Buckendorf teaches a carrier handle (seen as the triangular-shaped handle in between items 64 and 52 in Fig. 8) and wheels 80 capable of not contacting the ground when a member (72), also considered the strut, is adjusted by a bolt (68) to a first attachment point at the bottom of a slot (74). Therefore it would have been obvious to one of ordinary skill at the time of the invention to provide the work apparatus arrangement of Ellis, in view of the teachings of Buckendorf, with the carrier handle and wheels not contacting the ground at the first attachment point because it is known in the art to use a carrier handle and to have the wheels not touch the ground by moving a member (strut) to an attachment point for ease of use.

8. Claims 2-7 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maxwell (US 5,836,142) in view of Ellis et al. (US 3,792,734).

Regarding claim 5, Maxwell discloses a portable handheld work apparatus arrangement comprising:

- a work apparatus including a drive motor (seen as engine 50) and a work tool (seen as the cord 53 of lawn trimmer 12) driven by the motor;
- at least one transport wheel (seen as either of wheels 13, 14);
- first and second struts (seen as frames 23 and 18, respectively);

the first strut (seen as frame 23) having a first end (seen as end farthest from the wheels) facing away from the wheel and the first strut being rotatably mounted on the work apparatus at the first end (since the end of frame 23 is rotatably mounted to shaft 21), and

the second strut (seen as frame 18) having a first end (seen as end farthest from the wheels) facing away from the transport wheel, and

the second strut being fixable at the first end thereof on the work apparatus (see Fig. 1) at first and second attachment points thereon (since the frame 18 can be attached at a variety of locations at the lower end of shaft 21 ), so as to change the position of the wheel relative to the apparatus.

Maxwell fails to disclose attachment points being configured as detent recesses. Ellis teaches utilizing detent recesses (seen as notches 37) to affix arm (28) to different attachment points on the apparatus (see Fig. 1). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Maxwell to utilize detent recesses as attachment points as taught by Ellis because it is well known in the art to use detent recesses as attachment points in adjustable mechanisms.

Regarding claim 2, the first strut (seen as frame 23) defines an axis of rotation at the first end thereof (see Fig. 1 at the attachment of frame 23 to shaft 21 via bracket), the first and second attachment points are at first and second distances (seen as any two locations on the bottom end of the shaft 21 where the frame 18 can be attached to) from the axis of rotation, and the first and second distances being different from each other.

Regarding claim 3, the work apparatus has a frame (seen as shaft 21) and the wheel is disposed at the frame when the second strut (seen as frame 18) is fixed at the first attachment point (since the language "disposed at" in its broadest reasonable interpretation can encompass the view such as in Fig. 1 wherein either wheel 13, 14 is "disposed at" the shaft 21 since they are close to each other).

Regarding claim 4, the wheel (13 or 14) is at a distance from the shaft (21) when the frame (18) is fixed at the second attachment point.

Regarding claim 12, Maxwell discloses a plurality of second attachment points since they can be at varying locations along the shaft (21) at different distances from the axis of rotation of the first end of the first strut.

Regarding claim 13, Maxwell discloses first and second transport wheels (13, 14) and an axle each (see Fig. 2), and an additional first strut (seen as either 28 or 29), and the axle is held by said two first struts and said second strut (see Fig. 2).

Regarding claim 14, Maxwell discloses a type of motorized cultivator, since the invention is a motorized lawn trimmer.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Maxwell in view of Ellis as applied to claim 5 above, and further in view of Wians.

Regarding claim 6, the combination of Maxwell and Ellis discloses the aforementioned work apparatus arrangement but fails disclose the first attachment point as a detent recess closed toward the second strut. Wians teaches a closed end detent recess (seen in Fig. 5 as the right end of recesses 104) as the first attachment point. Therefore it would have been obvious to one of ordinary skill in the art at the time of the



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invention to provide detent recess as the first attachment point of the combination of Maxwell and Ellis with the closed end as taught by Wians because it is well known in the art for use in an adjustment mechanism.

Regarding claim 7, the second attachment point as taught by Wians is configured as a detent recess open toward the second strut (seen as the left end of recesses 104).

### ***Response to Arguments***

10. Applicant's arguments have been considered but are moot in view of the new grounds of rejection. The Examiner is also withdrawing the previously indicated allowability of claims 8-11 in light of an updated search and prior art that is being used to reject the limitation of the bolt extending transversely and coacting with the detent recesses.

Applicant has argued that Pearson does not provide several attachment points to which a strut can be fixed on the work apparatus and a detent recess is not configured as an attachment point. Ellis does provide several attachment points for the strut and also provides detent recesses as the attachment points.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mai T. Nguyen whose telephone number is (571) 272-7662. The examiner can normally be reached on Monday-Friday 8:00a-5:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Thomas B. Will  
Supervisory Patent Examiner  
Group 3600

mtn  
3/13/07